

THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
REVISION APPLICATION NO. 209 OF 2021

BETWEEN

SAID H. BITALI **APPLICANT**

AND

SGA SECURITY TANZANIA LIMITED **RESPONDENT**

JUDGMENT

Date of last order: 8/3/2022
Date of judgment: 24/3/2022

B.E.K. Mganga, J

On 5th October 2019, applicant entered into unspecified period of employment with the respondent as security guard at monthly salary of TZS 150,000/= . On 26th October 2020, respondent terminated employment of the applicant. On 6th January 2021, applicant filed labour dispute No. CMA/DSM/KIN/005/2021 before the Commission for Mediation and Arbitration (CMA) at Kinondoni complaining that his employment was unfairly terminated. In the CMA F1, applicant showed that he was claiming to be paid 24 months' salary compensation, one-month salary in lieu of notice, leave pay and overtime. Applicant also filed application for condonation of late referral of a dispute to the Commission (CMA F2). In

the said CMA F2, applicant showed that the reason for his lateness for 42 days was due to his sickness. Together with CMA F2, applicant filed an affidavit in support of the application for condonation. In his affidavit in support of the application for condonation, applicant stated that, on 6th October 2020, 12th October 2020 and 17th October 2020 he was exempted from work (ED) by the doctor for five days respectively and that on 23rd October 2020 he was given ED for three days. Applicant attached to his affidavit, documents showing these ED in as support that he was sick. Applicant stated further that, on 30th October 2020, 6th December 2020 and 22nd December 2020 he was issued with the National Social Security Fund Social Health Insurance Benefit Patient-treatment Form (SHIB 6). Applicant deponed further that, from 26th October 2020 to the time of filing the application for condonation at CMA, he was still suffering from URIC Acid.

On the other hand, Mr. Anthony Kalinga, the principal officer of the respondent, filed a counter affidavit resisting the application. In the counter affidavit, Mr. Kalinga stated that applicant was moving from one office to the other and further that he was supposed to use that time to file the dispute within time. Mr. Kalinga further stated that applicant failed to show sufficient cause for the delay.

On 28th April 2021, Hon. Lemwely, D, Mediator, delivered a ruling dismissing the application for condonation on ground that applicant failed to show sufficient cause for the delay. Aggrieved with the said ruling, applicant filed this application for revision with one ground namely that; the arbitrator erred to hold that there was no sufficient reason to warrant CMA to condone late filing the dispute.

Mr. Anthony Kalinga on behalf of the respondent filed a counter affidavit putting applicant to strict proof.

When the application was called for hearing, applicant appeared in person while the respondent was represented by Mr. Anthony Kalinga, the Human Resources officer.

In his submission, applicant was very brief that the arbitrator erred to dismiss his application despite the fact that there was evidence to show that the delay to file the dispute was due to sickness. Applicant referred the court to various documents attached to his affidavit filed both at CMA and in support of this application. He therefore prayed the application be allowed so that the dispute can be heard on merit by CMA.

On his part, Mr. Kalinga on behalf of the respondent submitted that documents that were attached to CMA F.2 did not prove that applicant was sick. Mr. Kalinga submitted that those documents were not authentic

because they were copies. In the course of his submission Mr. Kalinga conceded that, the National Health Insurance Forms that were attached to the application by the applicant are only issued after applicant was treated at hospital. Nevertheless, he maintained that applicant failed to account for each day of delay and prayed the application be dismissed.

In rejoinder, applicant submitted that, the arbitrator in dismissing the application for condonation, did not consider applicant's health condition that he was sick.

This application is straight forward. The only issue is whether there was evidence to justify the arbitrator's decision of dismissing the application for condonation filed by the applicant or not. In my view, there was none. As pointed out hereinabove, the counter affidavit of Mr. Anthony Kalinga that was failed at CMA in opposition of the application for condonation did not disapprove the evidence by the applicant that he was sick. The argument in Mr. Kalinga's affidavit that applicant was moving from one office to the other and that applicant was supposed to use that chance to file the dispute within time, in my view, is not supported by evidence. The affidavit of the applicant both at CMA and before this court clearly show that at that time, he was sick. There is no evidence showing that applicant was moving from one office to the other. What is clear is

that, he was attending at hospital or in public offices to be issued with forms to enable him to be treated. From where I am standing, that cannot be regarded that he was moving from one office to the other without a purpose. For the foregoing, I hereby hold that arbitrator erred in dismissing applicant's application for condonation.

That said and done, I hereby revise, quash, and set aside the CMA ruling that dismissed applicant's application for condonation. I therefore hereby allow the application and grant condonation to the applicant. I direct that parties should go back to CMA where the dispute will be heard without delay.

Dated at Dar es Salaam this 24th March 2022.



B.E.K. Mganga
JUDGE